

REMARKS

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing the following remarks.

Claims 1-20 are presently active in this case. The present Amendment amends claims 1, 5 and 6 and adds claims 7-20. The above amendment shows a complete listing of the claims and their respective status for the Examiner's convenience.

In the outstanding Office Action, it is noted that the drawings filed on October 20th, 2003 are accepted. The Examiner reminded applicants about the rules for claiming to priority under 35 U.S.C. 119(e) or 120 and 37 C.F.R. 1.78(a) and proper rules for filing Information Disclosure Statements. Examiner also objected to the claims under 37 CFR 1.126. Claims 1, 2, 4 and 5 were rejected under 35 U.S.C §102(b) as being anticipated by Wood (U.S. Patent No. 6,807,967). Claims 3 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wood (U.S. Patent No. 6,807,967).

In the outstanding Office Action, the Examiner states that the pending application appears to claim subject matter disclosed in prior Application No. 10/042,042, filed 10/25/01. Applicants presently intend to file a petition to accept the unintentionally delayed claim for priority under 35 U.S.C. §119(e), §120, §121 and §365(c). This petition will be accompanied by a reference to the prior application, a surcharge and a statement that the entire delay between the date the claim was due and the date the claim was filed was unintentional.

With respect to the Examiner's comments regarding the references listed in the application, an Information Disclosure Statement containing those references as well as other references has been submitted with this response. Applicants respectfully request that the Examiner consider those references.

With respect to the claim objections stating that the numbering of the claims is not in accordance with 37 C.F.R. 1.126, Applicants wish to thank the Examiner for renumbering the misnumbered claims. Additionally, Applicants have amended claim 5, line 1, to read “The nasal cannula of claim 4”, thus correcting the dependency of that claims.

In response to the rejections of claims 1, 2, 4 and 5 under 35 U.S.C. §102(e), Applicants respectfully request reconsideration of these rejections as discussed next.

Applicants have amended claim 1 to recite “first and second nasal inserts positioned on the nasal cannula with no indentation between the first and second nasal inserts for insertion into a patient’s nares”. Support for this limitation can be found, for example, at page 3 lines 10-11 reciting “that portions of the cannula may be locally reinforced to increase rigidity.” For example, if an indentation was present between the nasal inserts this may decrease the structural rigidity of this portion of the cannula in an undesired manner.

Applicants respectfully submit that these claim limitations are not taught or suggested by Wood. Figures 2A and 2B of Wood clearly show a notch or indentation 26, allow for increased flexibility to the cannula body. In view of the above, Applicants respectfully submit that the cited prior art fails to teach or suggest every feature recited in Applicants’ claims, so that claims 1, 2, 4 and 5 are believed to be patentably distinguishable over the cited prior art. Accordingly, Applicants respectfully traverse, and request reconsideration of the rejections based on Wood.

In response to the rejections of claims 3 and 6 under 35 U.S.C. §103(a) Applicants respectfully request reconsideration of these rejections and traverse the rejections as discussed next.

Applicants have similarly amended claim 6 to recite “two nasal inserts positioned on the nasal cannula with no indentation between the first and second nasal inserts for insertion into a

patient's nares". Thus, as discussed above, Applicants submit that Wood fails to teach or suggest the above recited claim limitation. Therefore, Applicants respectfully traverse, and request reconsideration of this rejection.

In order to clarify Applicant's invention and to vary the scope of protection recited in the claims, new claims 7-20 are added by way of the present amendment. New Claims 7-20 find support in Applicants disclosure as originally filed. Specifically, for example new independent claim 11 finds non-limiting support at page 3 with corresponding figure 2. Likewise, claims 7-10 and 12-20 generally find support at pages 3-4 and figures 1-6. Therefore new claims 7-20 are not believed to raise a question of new matter.

New claim 11 recites "a first nasal insert and a second nasal insert designed to be inserted and form a seal in the nares of a patient, the area disposed between the first nasal insert and the second nasal insert is not indented" which is not taught or suggested by the Wood reference as discussed above. Accordingly, applicants submit that claims 7-20 are allowable over the cited prior art.

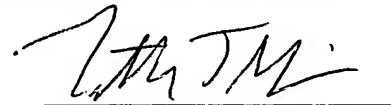
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. A Notice of Allowance for Claims 1-20 is earnestly solicited.

If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is encouraged to contact the undersigned attorney, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3136 and please credit any excess fees to such deposit account.

Respectfully Submitted,
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